



27th Annual Spring Planning & Zoning Conference

Welcome: Zoning Board of Adjustment Track

The conference will begin shortly.

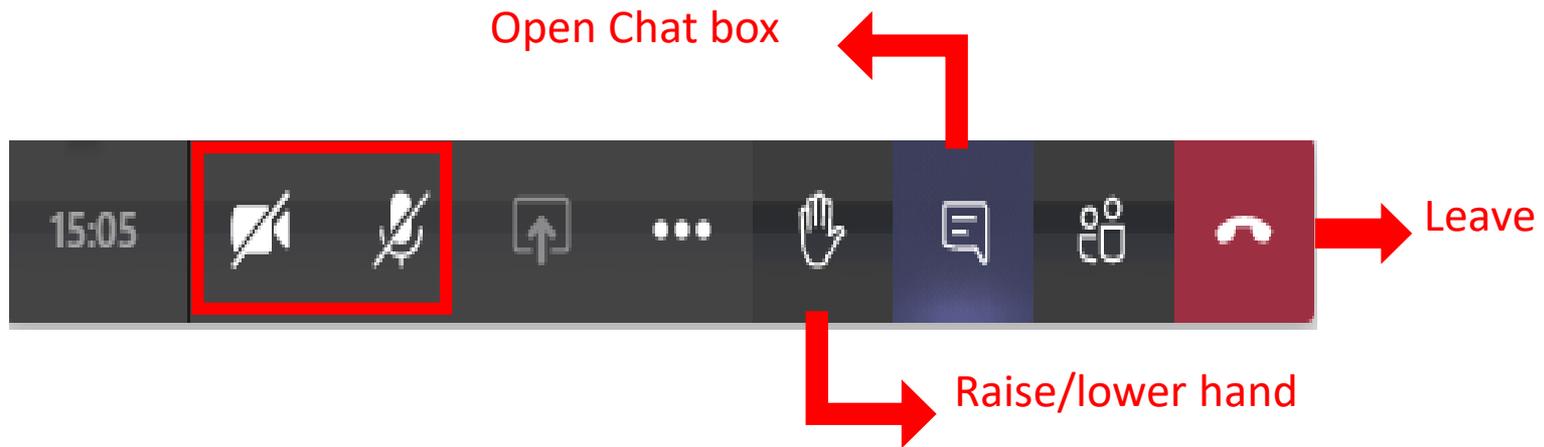
Please mute your microphone and turn off camera.

Check out OSI's Planning and Zoning Training [website](#) for:

- Link to Conference materials
- Information on OSI's Planning Lunches at Noon (PLAN) monthly webinar series
- A short, anonymous online survey to gather feedback on webinars and conference

Conference Logistics

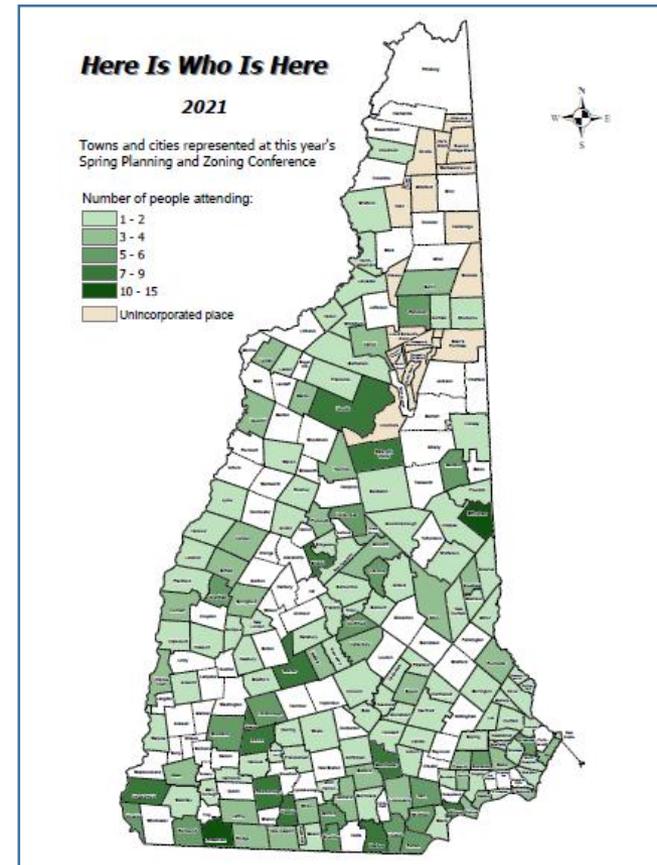
- Please be sure to **turn off** your camera and mute your microphone now.
- We will be **recording** the conference sessions. Any camera videos that are on may become part of the recording.



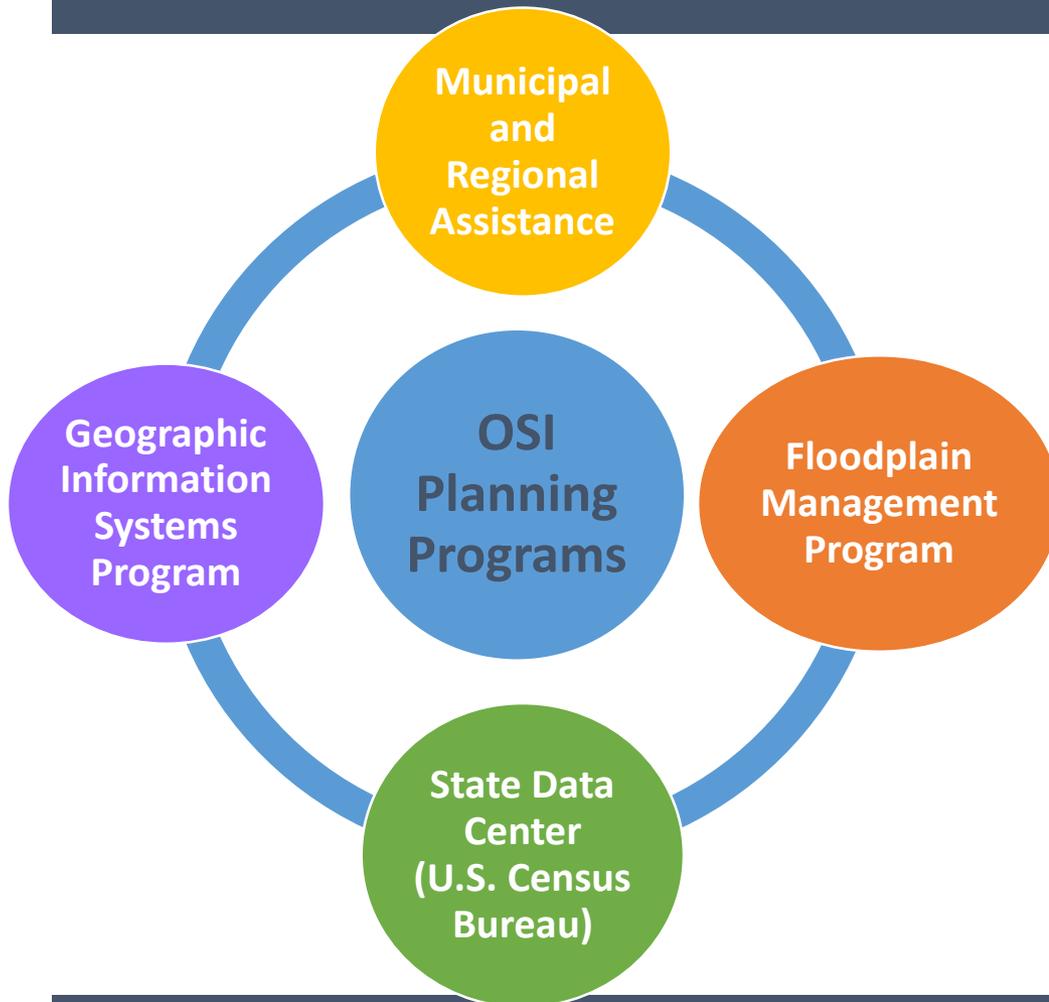
Welcome



- Moderator:
 - Michael Klass,
Principal Planner at OSI
- Conference tracks:
 - Planning Board
 - Zoning Board
- All sessions will be recorded and available online



OSI Planning Division



Training
Data
Technical Assistance
Maps
Resources

Coordination

Planning Lunches at Noon (PLAN) Monthly Webinar Series

AVAILABLE NOW:

- Dec 2020 Municipal Land Use Regulations Survey Results
- Jan 2021 2019 NH Housing Supply Report
- Feb 2021 Digging into RSA 155-E – Earth Excavations Law
- March 2021 Regional Housing Initiatives Roundtable
- April 2021 Welcome to the Board: Intro to Land Use Boards

UPCOMING:

- May 20 Broadband for Your Community
- June 17 Technical Review Committees
- July 15 Meeting Mechanics

Registration info, slides, and recordings of all webinars available [online](#)

Floodplain Training

- Floodplain Management Basics:
 - June 8 - 10 to 11:30 am
 - To register: email Samara.Ebinger@osi.nh.gov
- Recordings Available:
 - Making Substantial Improvement Determinations
 - Making Substantial Damage Determinations
 - FEMA Flood Mapping Basics for NH Community Officials

Today's Agenda

Time	Planning Board Track	Zoning Board Track
9:00 to 9:10 AM	Welcome and Introductory Remarks	
9:10 to 10:30 AM	Planning Board Basics	Roles and Responsibilities of the Zoning Board
10:30 to 10:40 AM	Break	
10:40 to 12:00 PM	Roles and Responsibilities of the Planning Board	Zoning Board of Adjustment Decision Making Process

The ZBA in NH

(the Rocket Docket version)

OSI Conference – May 15, 2021

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- More extensive materials from last October's presentation on Who, Where, When and How questions not addressed today.

What

- What:
 - Appeals of Administrative Decisions
 - Special Exceptions
 - Variances
 - Equitable Waivers of Dimensional Criteria
 - 91-A
 - New Housing Appeals Board

Format for Questions

- When
- Hypotheticals
- Town/City Counsel
- Via Tech before the start of next section

Appeals of Administrative Decisions

- RSA 674:33, I(a) and RSA 676:5
 - hear appeals “taken by any person aggrieved or by any officer, department, board, or bureau of the municipality affected by any decision of the administrative officer”
- RSA 676:5, II(a),
 - “administrative officer” = “any official or board who, in that municipality, has responsibility for issuing permits or certificates under the ordinance, or for enforcing the ordinance, and may include a building inspector, board of selectmen, or other official or board with such responsibility.”

Appeals of Administrative Decisions

- RSA 676:5, II(b)
 - “decision of the administrative officer” is further defined to mean “any decision involving construction, interpretation or application of the terms of the [zoning] ordinance” but does not include “a discretionary decision to commence formal or informal enforcement proceedings”.
 - Sutton v. Town of Gilford, 160 N.H. 43 (2010) (challenges to building permit must first be made to ZBA).

New Hampshire Alpha of SAE Trust v. Town of Hanover 172N.H. 69 (2019)

- Second case on Dartmouth Frat House
- Z.O. req'd "in conjunction with an institutional use"
- College suspended charter & CEO issued violation
- ZBA initially found Frat existed on its own prior to ZO
- College moved for rehrq & showed only existed prior "in conj. w college"
- ZBA reverse, Trial Court upheld, Sup. Ct. aff'd in part, vacated in part & remanded

New Hampshire Alpha of SAE Trust v. Town of Hanover
172N.H. 69 (2019)

- “Unconstitutional delegation of ZBA authority” to have College have the sole dispositive factor
- Remand to see if Frat an “institution” in its own right
- Lack of prior enforcement does not prohibit current enforcement
- ZBA free to accept or reject evidence as long as decision is reasonable and can reverse itself
- Member is not bias via request to have College notified

Appeals of Administrative Decisions

- RSA 676:5, III,
 - includes reviewing Planning Board decisions or determinations
 - which are based upon the construction, interpretation or application of the zoning ordinance,
 - unless the ordinance provisions in question concern innovative land use controls adopted under RSA 674:21 and those provisions delegate their administration to the Pl Bd.
 - a planning board decision regarding a zoning ordinance provision is ripe and appealable to the ZBA when such a decision is actually made. See, Atwater v. Town of Plainfield, 160 N.H. 503, 509 (2010) . The planning board need not complete its consideration of the planning issues involved in a site plan review for a zoning issue to be ripe and appealable to the ZBA. Id. at 510.

Appeals of Administrative Decisions

- *Batchelder v. Plymouth*, 160 N.H. 253 (2010)
 - Pl Bd interpretation of ZO allowing placement/removal of fill being “incidental to lawful construction”
- *Dartmouth Corporation of Alpha Delta v. Hanover*, 169 N.H. 743 (2017)
 - Z Officer’s interpretation of ZO provision limiting student housing to “in conjunction with another institution” and meaning of “non-conforming use”
- *Working Stiff Partners, LLC v. Portsmouth*, 172 N.H. 611 (2019)
 - Interpretation of ZO definition of “dwelling unit” as distinct from listed “transient occupancy” to support prohibition of Airbnb type usage

Appeals of Administrative Decisions

- RSA 676:5, III,
 - But see, Accurate Transportation, Inc. v. Town of Derry, 168 N.H. 108 (2015)(mere vote to accept Site Plan as complete is not enough to trigger obligation to bring appeal to ZBA).

Appeals of Administrative Decisions

- RSA 677:15
- The appeal to the ZBA should come first; and if a “dual track” appeal is brought to the Superior Court before the ZBA proceedings have concluded, then the Superior Court matter will be abated.

Appeals of Administrative Decisions

- definition of “a reasonable time” should be contained in the ZBA’s Rules of Procedure and should be referenced in any decision of an administrative officer to provide fair notice to the potential appellant.
- As short as 14 days. See, Daniel v. Town of Henniker Zoning Board of Adjustment, 134 N.H. 174 (1991); see also, Kelsey v. Town of Hanover, 157 N.H. 632 (2008) (ordinance definition of 15 days sufficient).

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- In the absence of such definition, however, the Superior Court will determine whether the time taken by the appellant is reasonable.
 - Tausanovitch v. Town of Lyme, 143 N.H. 144 (1998) (appeal brought within 55 days was held to be outside a reasonable time);
 - 47 Residents of Deering, NH v. Town of Deering et al., 151 N.H. 795 (2005)(provision of zoning ordinance authorized ZBA to waive deadline for administrative appeal);
 - Property Portfolio Group, LLC v. Town of Derry, 154 N.H. 610 (2006)(affirming dismissal of declaratory judgment action brought five months after planning board’s site plan determination); and
 - McNamara v. Hersh, 157 N.H. 72 (2008) (affirming dismissal of declaratory judgment action brought eight months after ZBA denial of neighbor’s appeal of administrative decision).

Appeals of Administrative Decisions

- Applicant may be given “second bite” when developer comes in to amend previously approved application.
 - *Harborside v. City of Portsmouth*, 163 N.H. 439 (2012)(ZBA’s decision to uphold Planning Board’s amendment of site plan which allowed change of use within approved space from retail to conference center after parking regulations had been modified reversed on appeal.)

Appeals of Administrative Decisions

- Applicant may be given “second bite” when developer comes in to amend previously approved application.
 - *Harborside v. City of Portsmouth*, 163 N.H. 439 (2012) (ZBA’s decision to uphold Planning Board’s amendment of site plan which allowed change of use within approved space from retail to conference center after parking regulations had been modified reversed on appeal.)
- Also, ZBA has authority to determine that unappealed CEO’s decision that variance is needed was error.
 - *Bartlett v. City of Manchester*, 164 N.H. 634 (2013) (“contained in every variance application is the threshold question whether the applicant’s proposed use of property requires a variance”)

Appeals of Administrative Decisions

- RSA 676:6, an appeal to ZBA stays the action being appealed,
 - unless, upon certification of the administrative officer, the action concerns “imminent peril to life, health, safety, property, or the environment”.

Appeals of Administrative Decisions

- may include constitutional challenges against ZO provisions
 - See, Carlson's Chrysler v. City of Concord, 156 N.H. 938 (2007)(provisions of sign ordinance against auto dealer's moving, electronic sign found to be constitutional);
 - Community Resources for Justice, Inc. v. City of Manchester, 157 N.H. 152 (2008) (ban on private correctional facilities in all districts violated State constitutional rights to equal protection; intermediate scrutiny requires the government to prove that the challenged legislation be substantially related to an important governmental objective);
 - Boulders at Strafford, LLC v. Town of Strafford, 153 N.H. 633 (2006)(overturning prior Metzger standard of review and redefining the "rational basis test" to require that the legislation be only rationally related to a legitimate governmental interest without inquiry into whether the legislation unduly restricts individual rights or into whether there is a lesser restrictive means to accomplish that interest.); and
 - Taylor v. Town of Plaistow, 152 N.H. 142 (2005)(ordinance provision requiring 1000 feet between vehicular dealerships upheld).

Appeals of Administrative Decisions

- Signs for Jesus et al. v. Town of Pembroke, et al., 1st Cir. Court of Appeals (No. 17-1192; Issued October 7, 2020)
 - Electronic Sign
 - 1st Amd & RLUIPA Claims
 - ZBA's denial of sign permit upheld

Appeals of Administrative Decisions

- may involve claims of municipal estoppel
 - Thomas v. Town of Hooksett, 153 N.H. 717 (2006)(finding of municipal estoppel reversed where reliance on prior statements of Code Enforcement Officer and Planning Board Chairman which were contrary to express statutory terms was not reasonable);
 - Cardinal Development Corporation v. Town of Winchester ZBA, 157 N.H. 710 (2008)(ZBA not estopped to deny motion for rehearing as untimely filed where ZBA Clerk did not have authority to accept after hours fax on 30 day nor could applicant's attorney reasonably rely that she had such authority);
 - Sutton v. Town of Gilford, 160 N.H. 43 (2010)(representation by Town Planning Director concerning "non-merged" status of lots could not be justifiably relied upon);

Appeals of Administrative Decisions

- **Dembiec v. Town of Holderness, 167 N.H. 130 (2014)**

- Assertion of a municipal estoppel claim for the first time in the trial court is not barred by the exhaustion of administrative remedies doctrine
- the applicable statutes do not confer jurisdiction upon ZBA to grant relief under the equitable doctrine of municipal estoppel.
- also noting that although prior cases including Thomas v. Town of Hooksett involved municipal estoppel claims that were initially asserted at the ZBA, the Court did not address whether the ZBA had jurisdiction to decide those claims.

Appeals of Administrative Decisions

- Forster v. Town of Henniker, 167 N.H. 745 (2015)
 - Weddings are not a valid “accessory use” under statutory definitions of agriculture or agritourism
 - “Accessory use” is “occasioned by” and “subordinate to” principle use
 - Must be “associated with a frequency that is substantial enough to rise above rarity
 - Petitioner failed to prove proposed uses have “commonly, habitually and by long practice been established as reasonably associated with the primary use in the local area.”
 - Legislative changes continue.

Appeals of Administrative Decisions

- De Novo Review

- Ouellette v. Town of Kingston, 157 N.H. 604 (2008) (ZBA allowed to conduct *de novo* review under RSA 674:33 of Historic District Commission denial of certificate for supermarket).
- But not required to do so.

Appeals of Administrative Decisions

- CBDA Development, LLC v. Town of Thornton, 168 N.H. 715 (2016)
 - the Fisher Standard applies to Planning Board decisions as well

Special Exceptions

Special Exceptions

- Different from Variances:
 - Variance seeks permission to do something that is NOT allowed by ZO
 - Spec. Exception seeks permission to do something that IS allowed by ZO IF ALL conditions met
 - ZO should provide checklist of conditions

Special Exceptions

- ZBA may not vary or waive any of the requirements set forth in the ordinance. See, Tidd v. Town of Alton, 148 N.H. 424 (2002); Mudge v. Precinct of Haverhill Corner, 133 N.H. 881 (1991); and New London Land Use Assoc. v. New London Zoning Board, 130 N.H. 510 (1988).

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- But applicant may ask for a *variance* from one or more of the requirements. See, 1808 Corporation v. Town of New Ipswich, 161 N.H. 772 (2011).

Special Exceptions

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- But applicant may ask for a *variance* from one or more of the requirements. See, 1808 Corporation v. Town of New Ipswich, 161 N.H. 772 (2011).
- Applicant has the burden of presenting sufficient evidence to support a favorable finding on each requirement. The Richmond Company, Inc. v. City of Concord, 149 N.H. 312 (2003); Tidd v. Town of Alton, 148 N.H. 424 (2002); and McKibbin v. City of Lebanon, 149 N.H. 59 (2002).

Special Exceptions

- Additionally, if the conditions are met, the ZBA must grant the special exception. Fox v. Town of Greenland et al., 151 N.H. 600 (2004); Cormier, Trustee of Terra Realty Trust v. Town of Danville ZBA, 142 N.H. 775 (1998); see also, Loughlin, Vol. 15 Land Use Planning and Zoning (3rd Ed., 2000), Section 23.02, p. 365.
- As with variances, special exceptions are not personal but run with the land. Vlahos Realty Co., Inc. v. Little Boar's Head District, 101 N.H. 460 (1958); see also, Loughlin, §23.05, p. 369;

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 - but see, Garrison v. Town of Henniker, 154 N.H. 26 (2006) (Supreme Court noted without comment the restriction on the variance that it would terminate if the applicant discontinued the proposed use).

Special Exceptions

- RSA 674:33, IV
 - Sp. Exceptions “shall be valid if exercised within 2 years from the date of final approval, or as further extended by local ordinance or by the zoning board of adjustment for good cause

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- RSA 674:33, IV
 - Sp. Exceptions “shall be valid if exercised within 2 years from the date of final approval, or as further extended by local ordinance or by the zoning board of adjustment for good cause,
 - provided that no such special exception shall expire within 6 months after the resolution of a planning application filed in reliance upon the special exception.”
 - A similar provision was inserted concerning variances. See, RSA 674:33, I-a.

Special Exceptions

- 2018 Amendment to RSA 674:33, I-a(b) and IV(c)
- Muni may amend Z.O. to provide for termination of Spec. Ex. and/or Var granted prior to 8/19/13 that have not been exercised.
- Once Z.O. is amended, Pl Bd “shall post notice at the City or Town Hall for one year and shall state the expiration date of the notice” and that spec. ex/var granted prior to that date shall be valid if exercised w/in 2 yrs “of the expiration date of the Notice”
- ZBA can further extend date for good cause

Special Exceptions

- Per RSA 674:33, VII, “neither a special exception nor a variance shall be required for a collocation or a modification of a personal wireless service facility, as defined in RSA 12-K:2.”

Special Exceptions

- Effective June 1, 2017, RSA 674:71 et seq. are added to require municipalities that adopt a zoning ordinance to allow accessory dwelling units as a matter of right, or by either conditional use permit pursuant to RSA 374:21 or by special exception, in all zoning districts that permit single-family dwellings.

Variations

History of Current Variance Criteria

- Result of 2009 SB 147
- Effective January 1, 2010
- Purpose was to do away with the Boccia distinction between “use” and “area” variances for unnecessary hardship
- “Returns” to Simplex;
- “Revives” Governor’s Island

Variance Criteria #1 - 4

- (1) The variance will not be contrary to the public interest;
- (2) The spirit of the ordinance is observed;
- (3) Substantial justice is done;
- (4) The values of surrounding properties are not diminished; and

Variance Criterion #5 A

- (5) Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.
- (A) For purposes of this subparagraph, “unnecessary hardship” means that, owing to special conditions of the property that distinguish it from other properties in the area:

Variance Criterion #5 A

- (5) Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.
- (A) For purposes of this subparagraph, “unnecessary hardship” means that, owing to special conditions of the property that distinguish it from other properties in the area:
 - (i) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and
 - (ii) The proposed use is a reasonable one.

Variance Criterion # 5 B

- (B) If the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

Variance Criterion # 5 B

- (B) If the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.
- The definition of “unnecessary hardship” set forth in subparagraph (5) shall apply whether the provision of the ordinance from which a variance is sought is a restriction on use, a dimensional or other limitation on a permitted use, or any other requirement of the ordinance.

Variance Criteria

- Per Bartlett v. City of Manchester, 164 N.H.634 (2013) may be asked to determine if variance even needed.

Variances

- Three key cases:
 - Harborside Associates, L.P. v. Parade Residence Hotel, LLC, 162 N.H. 508 (2011)
 - Malachy Glen Associates, Inc. v. Town of Chichester, 155 N.H. 102 (2007)
 - Farrar v. City of Keene, 158 N.H. 684 (2009)

THE VARIANCE WILL NOT BE CONTRARY TO THE PUBLIC INTEREST & CONSISTENT WITH SPIRIT OF THE ORDINANCE

- Per Chester Rod & Gun Club v. Town of Chester, 152 N.H. 577 (2005) et seq., construe Public Interest with Spirit of Ordinance
- To be contrary to the public interest or injurious of public rights, the variance “must unduly, and in a marked degree” conflict with the basic zoning objectives of the ordinance. Chester Rod & Gun Club, at 581; and Harborside at 514.
- “Mere conflict with the terms of the ordinance is insufficient.” Harborside at 514.
- Examine whether the variance would (a) alter the essential character of the locality or (b) threaten public health, safety or welfare. Id. See also, Malachy Glen, 155 N.H. 102, 105-106 (2007); and Naser d/b/a Ren Realty v. Town of Deering ZBA, 157 N.H. 322 (2008).

Substantial Justice

- Per Loughlin, Land Use, Planning and Zoning, New Hampshire Practice, Vol. 15, 4th ed., and its reference to the Office of State Planning Handbook, which indicates as follows:
- “It is not possible to set up rules that can measure or determine justice. Each case must be individually determined by board members. Perhaps the only guiding rule is that any loss to the individual that is not outweighed by a gain to the general public is an injustice. The injustice must be capable of relief by the granting of a variance that meets the other qualifications. A board of adjustment cannot alleviate an injustice by granting an illegal variance.” Id. at § 24.11.
- See also, Farrar v. City of Keene, 158 N.H. 684, 692 (2009); and, Harborside at 515.

THE VALUES OF SURROUNDING PROPERTIES ARE NOT DIMINISHED.

- Area for Board discretion and common sense per Harborside
 - But be cautious where Board opinion contradicts actual expert testimony. See Malachy Glen
- consider not only expert testimony from realtors and/or appraisers, but also from residents in the affected neighborhood
 - Balance the “nay sayer” with other evidence

LITERAL ENFORCEMENT OF THE PROVISIONS OF THE ORDINANCE WOULD RESULT IN AN UNNECESSARY HARDSHIP

- Break this down into pieces:
 - ID if there are Special Conditions that distinguish subject from others in neighborhood
 - Found in the property itself and not in the individual plight of the applicant. See, e.g., Harrington v. Town of Warner, 152 N.H. 74, 81 (2005); and Garrison v. Town of Henniker, 154 N.H. 26, 30 (2006)
 - Can include the “as built” environment. See, Harborside at 518 (special conditions include the mass of the building and its use as a hotel in case for sign variances)
 - ID what are the purposes of the Ordinance Provision(s) in question
 - Determine whether “no fair and substantial relation” exist between those purposes and the implementation of the Provision(s) to the project
 - Determine if the project is “reasonable”
 - prior opinions containing the phrases that a use is “presumed reasonable” if it is allowed in the district and that the ZBA’s desires for an alternate use are “not material” were all in the context of “area” variances and made with respect to the “public interest” and “spirit of the ordinance” criteria, above. See, Vigeant v. Town of Hudson, 151 N.H. 747, 752 - 53 (2005); and Malachy Glen, 155 N.H. at 107; see also, Harborside at 518-519 (applicant did not need to show signs were “necessary” rather only had to show signs were a “reasonable use”).
 - Difference between Prong A and Prong B

Variations

- Status of “Use” and “Area Variations”

- Although eliminated by statute, it appears the New Hampshire Supreme Court still finds the “use” and “area” variance distinction to be useful in certain contexts. See, 1808 Corporation v. Town of New Ipswich, 161 N.H. 772 (2011) (Sup. Ct., disagreeing with petitioners’ argument that they were entitled to expand an office use based on expansion of non-conforming use doctrine, reasoned that because use was permitted per special exception and variance granted was “area” not a “use” variance, expansion of non-conforming uses doctrine does not apply).

Disability Variances

- RSA 674:33, V authorizes variances without a finding of unnecessary hardship “when reasonable accommodations are necessary to allow a person or persons with a recognized physical disability to reside in or regularly use the premises”.
 - Requires that the v. “shall be in harmony with the general purpose and intent” of the ordinance. RSA 674:33, V(a).
 - ZBA is allowed to include a finding that the v. shall survive only so long as the particular person has a continuing need to use the premise. RSA 674:33, V(b).

Equitable Waivers of Dimensional Requirements

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- RSA 674:33-a, ZBA can grant equitable waivers from
- physical layout, mathematical or dimensional requirements imposed by ZO

Equitable Waivers of Dimensional Requirements

- RSA 674:33-a, ZBA can grant equitable waivers from
- physical layout, mathematical or dimensional requirements imposed by ZO
 - but not use restrictions – see, Schroeder v. Windham, 158 N.H. 187 (2008)

Equitable Waivers of Dimensional Requirements

- Owner has burden of proof on four (4) criteria:

Equitable Waivers of Dimensional Requirements

- Owner has burden of proof on four (4) criteria:
 - that the violation was not noticed or discovered by any owner, agent or municipal official, until after the violating structure had been substantially complete, or until after a lot or other division of land in violation had been subdivided by conveyance to a bona fide purchaser for value. RSA 674:33-a, 1(a);

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 - that the violation was not an outcome of ignorance of the law, failure to inquire, obfuscation, misrepresentation or bad faith on the part of the owner or its agents, but was instead caused by either a good faith error in measurement or calculation made by the owner or its agent, or by an error of ordinance interpretation or applicability by a municipal official in the process of issuing a permit over which he has authority. RSA 674:33-a, 1(b);

Equitable Waivers of Dimensional Requirements

- that the physical or dimensional violation does not constitute a public or private nuisance, nor diminish surrounding property values, nor interfere with or adversely affect any present or permissible future use of any such property. RSA 674:33-a, 1(c); and

Equitable Waivers of Dimensional Requirements

- that the physical or dimensional violation does not constitute a public or private nuisance, nor diminish surrounding property values, nor interfere with or adversely affect any present or permissible future use of any such property. RSA 674:33-a, I(c); and
- that due to the degree of construction or investment made in ignorance of the violation, the cost of correction so far outweighs any public benefit to be gained such that it would be inequitable to require a correction. RSA 674:33-a, I(d).

Equitable Waivers of Dimensional Requirements

- If the violation has existed for more than 10 years and that no enforcement action, including written notice of violation, has commenced during such time by the municipality or any person directly affected, then Owner can gain a waiver even without satisfying the first and second criteria. RSA 674:33-a, II.

Equitable Waivers of Dimensional Requirements

- Property shall not be deemed a “non-conforming use” once the waiver is granted
- Waiver shall not exempt future use, construction, reconstruction, or additions from full compliance with the ordinance. RSA 674:33-a, IV.

Equitable Waivers of Dimensional Requirements

- Property shall not be deemed a “non-conforming use” once the waiver is granted
- Waiver shall not exempt future use, construction, reconstruction, or additions from full compliance with the ordinance. RSA 674:33-a, IV.
- Does not to alter the principle of an owner’s constructive knowledge of all applicable requirements, nor does it impose any duty on municipal officials to guarantee the correctness of plans reviewed or property inspected by them. Id.

Equitable Waivers of Dimensional Requirements

- RDM Trust v. Town of Milford ____ N.H. ____ (Docket No. 2015-0495; Issued March 31, 2016)
 - 3JX decision reversed TCt's affirmance of ZBA's grant of equitable waiver where the error was not based on the owner's error in measurement but rather on a conscious decision to hold the non-conforming line of the existing house

Equitable Waivers of Dimensional Requirements Dietz v. Town of Tuftonboro, 171 N.H. 614 (2019)

- ZBA granted 2 Eq. Waivers; Abutter complained
- 1999 CEO had granted BP for 2nd fl add over existing footprint w/in lake setback
- 2008 ZBA granted Var. for 2nd fl add over existing porch
- 2014 survey showed more of adds had been in setback than had been thought
- Abutter wanted all removed; Trial Ct aff'd ZBA
- Supreme Ct aff'd Tr. Ct.

Equitable Waivers of Dimensional Requirements Dietz v. Town of Tuftonboro, 171 N.H. 614 (2019)

- written findings of each element are not rq'd by the statute
- RSA 673:33-a, I(d) is to be interpreted broadly re reliance on misrep of Muni Official
- BOP is on the Applicant to show all elements; but once ZBA grants, the BOP shifts to the Appealing Party to show error of law or unreasonable

Equitable Waivers of Dimensional Requirements Dietz v. Town of Tuftonboro, 171 N.H. 614 (2019)

- ZBA members can properly use their own knowledge, experience and common sense
- Variance is not a prereq for Eq. Waiver
- Cumulative Impact of Bacon should not be extended to Eq. Waiver

RSA 91-A

- Applies to ZBA
 - Avoid Email
 - RSA 91-A:3(II)(I [as in “L”] allows Non-Public Session to consider legal advice
 - In writing or oral
 - RSA 91-A:2, II-b requires approved mins & notices of mtgs to be posted on website or listed where they may be found
 - Hampstead School Board decision

Housing Appeals Board

Housing Appeals Board

- 2019 SB 306-FN
- RSA Chapter 679
 - Broad scope
 - Ostensibly same format and standard as cases brought in Superior Court
 - Members appointed by Supreme Court in September
 - Up and running – www.hab.nh.gov
 - Certified Record due within 30 days of filing of Appeal

Any Remaining Questions

Thank you!

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Question and Answer Session

- If you would like to ask a question, please either raise your hand and unmute yourself or type your question in the Chat box. If on the phone, lines have been unmuted.



Click to mute
and unmute

Click to raise
and lower hand

Click to open
Chat box

Thank you!

- All Conference Session slides and recordings will be available next week
- Feedback Encouraged!
 - See chat box for link to brief survey, which also can be found at link below

[Click Here for Feedback Survey](#)

Short Break

Next Up:

10:40 A.M. - ZBA Decision Making Process